

THE MERMIGIS LAW GROUP, P.C.

85 Cold Spring Road

Syosset, NY 11791

516-353-0075

MermigisLaw@GMail.com

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Via ECF

The Honorable Colleen McMahon
Chief Judge of the Southern District of New York
United States District Court
500 Pearl Street
New York, New York 10007

MEMO ENDORSED

Dear Judge McMahon:

This Court has repeatedly held that leave to amend a Complaint shall be freely granted when justice so requires, as it unquestionably does here. See *Ricciuti v. N.Y.C. Transit Auth.*, 941 F.2d 119, 123 (2d Cir. 1991). Rule 15 provides for liberal leave to amend, and none of the circumstances that would prevent amendment such as undue prejudice or excessive delay are present here. The Court should grant Plaintiffs' motion to amend.

There is a well-established "presumption in favor of granting leave" to amend under Rule 15(a). See *Sigmund v. Martinez*, No. 06 CIV. 1043 RWS MHD, 2006 WL 2016263, at *1 (S.D.N.Y. July 13, 2006) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)); see also *In re United Brands Co. Sec. Litig.*, No. 85 CIV. 5445 (JFK), 1990 WL 16164, at *2 (S.D.N.Y. Feb. 15, 1990) ("[T]he Court begins with the presumption that the motion should be granted unless good reason exists to deny it."). Given the presumption that granting leave favors the interests of justice, "it is rare that such leave should be denied, especially when there has been no prior amendment." *Ricciuti v. N.Y.C. Transit Auth.*, 941 F.2d 119, 123 (2d Cir. 1991).

On March 17, 2021, Governor Cuomo signed Executive Order 202.97, which directed that indoor dining in New York City will be allowed to 50% capacity. On March 21, 2021, Governor Cuomo signed Executive Order 202.98, which directed that small theaters will be

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An answer has been filed by at least some defendants, per Rule 15(a)(2).
You are required to make a motion to leave to amend.
I do not accept such motion by letter, and I expect a fully thought out response, so if you want to make a motion to leave to amend, make a motion. If this case is to be resolved, what the preliminary injunction motion, U

allowed to open to 33% capacity. Defendant, through his executive orders, has once again singled out Plaintiffs' speech on the basis of its content. Restaurants and bars with live music, churches, night clubs, jazz supper clubs and event venues are permitted to operate to 50% capacity in New York, yet small venue theaters are permitted to reopen to 33% capacity.

As applied to Plaintiffs, the issuance and enforcement of Defendant's orders continues to violate the Free Speech Clause of the First Amendment made applicable to the states by the Fourteenth Amendment.

Plaintiff has not delayed in seeking leave to amend. The Executive Orders were issued within the last two weeks and discovery has not commenced in this Action.

Because allowing amendment of the complaint based largely on the new Executive Orders that continue to violate the Plaintiffs' First Amendment rights serves the interests of justice and will not result in any undue prejudice to Defendants or delay to the proceedings, Plaintiffs' respectfully request that the Court grant them leave to amend.

Respectfully yours,

/s/ James G. Mermigis

James G. Mermigis, Esq.